

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

RECEIVED

Missoula DIVISION
(You must fill in this blank. See Instruction F)

MAY 17 2017

Clerk, U.S. Courts
District of Montana
Missoula DivisionElizabeth T. Runkle

(Write the full name of each plaintiff who is filing this complaint. Each named plaintiff must sign the complaint.)

Plaintiff,

-against-

Rosauers Supermarkets, Inc.BOB BurrisRAY SPRinkleSteven H. Winterbauer

(Write the full name(s) of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. The names listed in the above caption must be identical to those contained in Section II. Do not include addresses here and do not use et al.)

Defendants.

Case No. CV 17-69-M-DLC-JCL
(to be filled in by the Clerk's Office)COMPLAINT
(Pro Se Non-Prisoner)Jury Trial Demanded: ☒ Yes ☐ No
(check one)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to

INSTRUCTIONS

1. Use this form to file a civil complaint with the United States District Court for the District of Montana. Include only counts/causes of action and facts – not legal arguments or citations. You may attach additional pages where necessary. Your complaint must be typed or legibly handwritten in ink and on white paper. Write on only one side of the paper. Do not use highlighters and do not staple or otherwise bind your papers. All pleadings and other papers submitted for filing must be on 8 ½" x 11" paper (letter size). You must sign the complaint (see page 8). Your signature need not be notarized but it must be an original and not a copy. The Clerk's Office cannot provide you copies of documents in your file without prepayment of \$0.10 per page (for documents electronically available) or \$0.50 (for documents not electronically available). Please keep a copy of the documents you send to the Court.
2. The filing fee for a complaint is \$350.00 plus a \$50.00 administrative fee for a total of \$400.00. This amount is set by Congress and cannot be changed by the Court. If you pay the filing fee, you will be responsible for serving the complaint on each defendant and any costs associated with such service.
3. If you are unable to prepay the entire filing fee and service costs for this action, you may file a motion to proceed in forma pauperis.
4. Complaints submitted by persons proceeding in forma pauperis must be reviewed by the Court before defendants are required to answer. *See* 28 U.S.C. § 1915(e)(2). The Court will dismiss your complaint before it is served on defendants if: (1) your allegation of poverty is untrue; (2) the action is frivolous or malicious; (3) your complaint does not state a claim upon which relief may be granted; or (4) you sue a defendant for money damages and that defendant is immune from liability for money damages. After the Court completes the review process, you will receive an Order explaining the findings and any further action you may or must take. The review process may take a few months; each case receives the judge's individual attention. Plaintiffs should not serve defendants, pursue discovery, or request entry of default judgment prior to the completion of this review process.
5. The case caption (page 1 of this form) must indicate the proper Division for filing. The proper Division is where the alleged wrong(s) occurred. When you have completed your complaint, mail the *original* of your complaint and either the full filing fee or your motion to proceed in forma pauperis to the proper Division:

Billings Division: *Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Garfield, Golden*

Valley, McCone, Musselshell, Park, Petroleum, Powder River, Prairie, Richland, Rosebud, Stillwater, Sweetgrass, Treasure, Wheatland, Wibaux, and Yellowstone Counties

U.S. District Court Clerk, 601 2nd Avenue North, Suite 1200, Billings, MT 59101

Butte Division: *Beaverhead, Deer Lodge, Gallatin, Madison, and Silver Bow Counties*

U.S. District Court Clerk, 400 N. Main, Butte, MT 59701

Great Falls Division: *Blaine, Cascade, Chouteau, Daniels, Fergus, Glacier, Hill, Judith Basin, Liberty, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole, and Valley Counties*

U.S. District Court Clerk, 125 Central Ave. West, Great Falls, MT 59404

Helena Division: *Broadwater, Jefferson, Lewis & Clark, Meagher, and Powell Counties*

U.S. District Court Clerk, 901 Front St., Ste 2100, Helena, MT 59626

Missoula Division: *Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders Counties*

U.S. District Court Clerk, P.O. Box 8537, Missoula, MT 59807

I. Parties to this Complaint

A. Plaintiff

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

Elizabeth T. Runkle

Street Address

P.O. Box 882

City and County

Lakeside Flathead

State and Zip Code

MT 59922

Telephone Number

406-309-5869

E-mail Address

rhettroebandbeth@msn.com

B. Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an

individual defendant, include the person's job or title (if known) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both.

Defendant No. 1:

Name Rosavers Supermarkets Inc.
Job or Title Rosavers Corporate Office (if known)
Street Address 1815 W. Garland Ave
City and County Spokane Spokane
State and Zip Code WA 99205
Telephone Number (509) 326-8900
E-mail Address _____ (if known)
☒ Individual capacity ☒ Official capacity

Defendant No. 2:

Name Bob Burris
Job or Title Store Manager (if known)
Street Address 2150 U.S. Highway 93 S.
City and County Kalispell Flathead
State and Zip Code MT 59901
Telephone Number (406) 755-5088
E-mail Address _____ (if known)
☒ Individual capacity ☒ Official capacity

Defendant No. 3:

Name Ray Sprinkle
Job or Title CEO of URM stores (if known)
Street Address 1815 W. Garland Ave
City and County Spokane Spokane
State and Zip Code WA 99205
Telephone Number (406) 755-5088
E-mail Address _____ (if known)
☒ Individual capacity ☒ Official capacity

Defendant No. 4:

Name Steven H. Winterbauer
 Job or Title Winterbauer & Diamond (if known) PLLC
 Street Address 1200 Fifth Avenue Suite 1700
 City and County Seattle Seattle
 State and Zip Code WA 98101
 Telephone Number 206-676-8448
 E-mail Address steven@winterbauerdiamond.com (if known)
☒ Individual capacity ☒ Official capacity

(NOTE: If more space is needed to furnish the above information, continue on a blank sheet labeled "APPENDIX A: PARTIES").

II. Basis for Jurisdiction

- Check the option that best describes the basis for jurisdiction in your case:
- ☒ **Federal Question:** Claims arising under the Constitution, laws, or treaties of the United States. This includes claims brought under 42 U.S.C. § 1983 against state or local officials for the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]."
 - ☐ **U.S. Government Defendant:** United States or a federal official or agency is a defendant. This includes claims brought against federal employees under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971)
 - ☐ **Diversity of Citizenship:** A matter between individual or corporate citizens of different states and the amount in controversy exceeds \$75,000.

III. Venue

This court can hear cases arising out of the District of Montana. Under 28 U.S.C § 1391, this is the right court to file your lawsuit if: (1) All defendants live in this state AND at least one of the defendants lives in this district; OR (2) A substantial part of the events you are suing about happened in this district; OR (3) A substantial part of the property that you are suing about is located in this district; OR (4) You are suing the U.S. government or a federal agency or official in their official capacities and you live in this district.

Please explain why venue is appropriate in this Court:

A substantial part of the events I am suing about happened in this district.

Pro Se Non-Prisoner Complaint Form

Plaintiff's Last Name Elizabeth T. Runkle

(Revised April 2016)

Page 5 of 8

IV. Statement of Claim(s)

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph.

A. Count I:

1. What federal constitutional or statutory right(s) do you claim is/are being violated by defendants?

Title 1 of the Americans with Disabilities Act

2. What date and approximate time did the events giving rise to your claim(s) occur? The discrimination began 1/15/2017 and continued until my constructive discharge on 9/18/2016

3. Supporting Facts: (Include all facts you consider important, including names of persons involved, places, and dates. Describe what happened without citing legal arguments, cases, or statutes).

see Appendix B
statement of claims
Pg 1 & 2

4. Defendants Involved: (List the name of each defendant involved in this claim and specifically describe what each defendant did or did not do to allegedly cause your injury).

see Appendix B
statement of claims
Pg 2 & 3

(NOTE: For each additional claim, use a blank sheet labeled "APPENDIX B. STATEMENT OF CLAIMS." You must address paragraphs IV(A)(1-4) for each count., following the directions under IV.

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive. (Do not cite legal arguments, cases, or statutes). Attach additional pages if needed.

See APPENDIX C: Injury
ATTACHED

(NOTE: If more space is needed to furnish the above information, continue on a blank sheet labeled "APPENDIX C: INJURY").

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims. I would like to request that the court order Rosauers Supermarket, Inc. to improve their procedures for addressing discrimination complaints, including a comprehensive training program for all employees designed to prevent and address issues with discriminating against employees and customers with mental illness. I would like to request Monetary Compensation for ① lost wages due to promotion denial, ② the yearly salary & Health coverage (See ATTACH APPENIX D Request for relief)

(NOTE: If more space is needed to furnish the above information, continue on a blank sheet labeled "APPENDIX D: REQUEST FOR RELIEF").

Pro Se Non-Prisoner Complaint Form
Plaintiff's Last Name Runkle

(Revised April 2016)
Page 7 of 8

VII. Plaintiff's Declaration

A. Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

B. I understand I must keep the Court informed of my current mailing address and my failure to do so may result in dismissal of this Complaint without notice to me.

C. I understand the Federal Rules of Civil Procedure prohibit litigants filing civil complaints from using certain information in documents submitted to the Court.

In order to comply with these rules, I understand that:

- social security numbers, taxpayer identification numbers, and financial account numbers must include only the last four digits (e.g. xxx-xx-5271, xx-xxx5271, xxxxxxxx3567);
- birth dates must include the year of birth only (e.g. xx/xx/2001); and
- names of persons under the age of 18 must include initials only (e.g. L.K.).

If my documents (including exhibits) contain any of the above listed information, I understand it is my responsibility to black that information out before sending those documents to the Court.

I understand I am responsible for protecting the privacy of this information.

D. I understand the submission of a false statement or answer to any question in this complaint may subject me to penalties for perjury. I declare under penalty of perjury that I am the Plaintiff in this action, I have read this complaint, and the information I set forth herein is true and correct. 28 U.S.C. §1746; 18 U.S.C. §1621.

Executed at Missoula Federal Courthouse on 1-17-2017, 2017.
(Location) (Date)

Signature of Plaintiff: Elizabeth T. Runkle

Printed Name of Plaintiff: Elizabeth T. Runkle

APPENDIX B. STATEMENT OF CLAIMS

Count 1:

3. Supporting Facts: I am a person diagnosed with a disability called bipolar 1 disorder. I was hired by Rosauers Supermarkets, Inc. in April of 2007 as an All Purpose Clerk at their store in Kalispell Montana. On 1/15/2014 I disclosed my disability to two of my managers at the Kalispell Rosauers, Bob Burris, Store Manager and Mike Owens, Front End Service Manager, as well as a significant number of other employees and customers. On 1/15/2014, I requested the reasonable accommodation of one day off due to an exacerbation of the symptoms of my disorder. I was denied accommodation for my disability. I was told that there were no workers available to replace me because everyone was going to an employee party scheduled for that evening. I tearfully and fitfully begged to go home on several occasions throughout that day, but was instead required to work the entire eight hour shift in a clearly unfit condition. I was medically and emotionally injured as a direct result of this action by Rosauers. Directly after I disclosed my disability on 1/15/2014, my job duties were drastically altered in a very negative way with the implementation of a clandestine disciplinary action. When this drastic change to my work duties was implemented, I was not expressly informed by management that this negative changes to my work usual routine was taking place, nor was I advised in any way about what reasons management might have for making the changes, nor was I advised in any way about actions I might be able to take to address the humiliating, embarrassing and unwarranted changes to my job duty assignments. Since the changes were implemented covertly and without my knowledge, it was difficult for me to ascertain precisely what was going on with my job duty assignments. In the spring of 2014, a fellow front end employee approached me in the lady's room to confirm my suspicions that I was being discriminated against because of my disability, per the confidential instructions she had been given by Store Manager Bob Burris to drastically alter my job assignments and opportunities to perform the duties that I had been performing with regularity for the previous seven years. I then confronted Mike Owens about the embarrassing changes to my duties. Mike Owens said that Bob Burris had implemented the changes to my duty assignments because of a change in Bob Burris's attitude towards me after I disclosed my disability. Mike Owens told me the changes to my duties were based solely upon my actions on 1/15/2014 and a subsequent perception change on the part of Store Manager Bob Burris regarding my mental state. I then contacted the labor union and arranged for a formal meeting held in August of 2014. The purpose of this meeting was to address the unfavorable reclassification of my job duty assignments and address that I perceived this reclassification to be discrimination based upon my disability. In that meeting in Bob Burris's office, Mr. Burris denied outright that any changes had been made to my duties. Mr. Burris said that such a change would be "borderline harassment." Mr. Burris said that I had not been reclassified, but was in fact an employee in good standing. He expressed that in the near future I should expect to receive all the training and promotion opportunities available to a front end checker with my excellent work performance record. The discrimination appeared to cease abruptly immediately following that meeting. (APPENDIX B: STATEMENT OF CLAIMS #3. COUNT 1 continued on PAGE 2)

Runkle

APPENDIX B. STATEMENT OF CLAIMS CONTINUED

(3. CONTINUED) However, over time, it became clear that there was a continuation of the hostile work environment created by Bob Burris's directives to deny me the opportunity to perform the job duty assignments that I had always performed so well for the first seven years of my employment (excluding the day I was forced to work when my disability was severely affecting my ability to do my job). Rosauers management continued to deny me the training and promotion opportunities available to a qualified, experienced and highly capable employee such as myself, but chose instead to promote to the classification known as "booth person" a substantial number of other far less experienced and far less qualified applicants. The only reason I was ever given the denial of promotion and training was a perception change on the part of management based solely upon my disability. I contacted Rosauers Human Resources Director Marcy Sullivan asking for a complete investigation. I was never informed of the results of their investigation and the discrimination continued. On 06/23/2016, a formal investigation by the Montana Human Rights Bureau (MHRB) began. I hoped this investigation would force Rosauers to finally address and correct the problem. Instead of honestly addressing the situation, Rosauers chose instead to enter negligently false and deliberately fraudulent testimony to the MHRB. Rosauers falsely stated that they had openly informed me about the implementation of the duty changes, claiming falsely that Rosauers management told me about a "set of performance issues" that gave them a legal right to deny me equal opportunity and offered me instructions and directions on how to correct these issues. This testimony is unequivocally false. Because it was obvious that this company had no intentions of ever honestly addressing the discrimination and correcting the behavior responsible for creating a hostile work environment, but was rather clearly going to continue their pattern of "gas lighting" harassment, promotion and training denial, and unfavorable treatment because I have a disability, I was forced into a constructive discharge on 09/18/2016. I received a dismissal and a right to sue letter from the EEOC on February 20, 2017.

4. Defendants Involved: Bob Burris was responsible for enacting negative discriminatory changes to my long held work duties and was responsible for denying me requested promotion and training opportunities. I was qualified to continue to perform my long held duties and I was qualified to receive the training and promotion opportunities I requested. I was denied those opportunities, not because of legitimate performance issue concerns, but because Bob Burris had changed his perception of me based solely upon the disclosure of my disability. Rosauers Supermarkets, Inc. did not properly address my allegations of discrimination based upon my disability. Rosauers did not follow signed company policy regarding how the company investigates allegations of discrimination/harassment. Rosauers entered negligently false testimony to the Montana Human Rights Bureau (MHRB) with regards to my work record. Rosauers entered negligently false testimony to the MHRB with regards to the behavior of Store Manager Bob Burris. Rosauers was given many opportunities to mitigate this situation, but chose instead to exacerbate the problem with inaction and then with negligently false testimony to the MHRB filled with deliberate misrepresentations of fact, fraudulent, malicious. (APPENDIX B: STATEMENT OF CLAIMS: COUNT 1, #4 continued on PAGE 3)

(APPENDIX B: STATEMENT OF CLAIMS: COUNT 1, #4 continued) and slanderous allegations about my character and my ability to do my job. Ray Sprinke, Chairman of the Board and CEO of URM Stores is mentioned as a responsible party in the matter in the testimony given to the MHRB by WINTERBAUER & DIAMOND PLLC and signed by Mr. Steven H. Winterbauer. Both of these individuals are named as defendants in my suit because they are both responsible for the misrepresentations of fact and negligently false, deliberately fraudulent testimony given to the MHRB.

Runkle

APPENDIX C: INJURY

My medical condition, bipolar 1 disorder, was exacerbated by the treatment I received at Rosauers, including but not limited to the deleterious effect upon my health caused by the stress of dealing with a sustained and deliberate pattern of gas lighting harassment and the implied and expressed contempt and unfavorable treatment I received because I requested reasonable accommodation due to my disability. I was made into a fool, made into a laughing stock publicly before all my fellow employees as well as numerous customers at our store. I was not at any time during my active employment ever given by management any legitimate reasons for the negative unfavorable directives a substantial number of my fellow employees were secretly and without my knowledge given regarding me and my ability to do my job. I was embarrassed and humiliated by the differential treatment and the assertions made by management, both expressed and implied, that I was unable to perform the assignments and duties that I was fully capable of performing, and had been performing for seven years, because I disclosed that I have a disability. Because of the sustained and deliberate pattern of discrimination/harassment and Rosauers total refusal to address or correct this situation, I was forced into a constructive discharge from my employment with Rosauers Supermarkets, Inc. on 09/18/2017. My reputation in the community has been negatively affected by the actions of Rosauers management and this constructive discharge. It has been very painful, stressful and embarrassing to see all the customers I used to enjoy serving at the store and it has been immensely stressful and painful for me to be separated from the employees that I maintained a loving and deeply caring relationship with during my time working for this company. For my first seven years, I absolutely loved my job at Rosauers. It has caused me an immense amount of stress and terrible grief confronting and battling the illegal discrimination which eventually forced me out of that job. I also experienced substantial financial hardship as a result of this constructive discharge.

Runkle

APPENDIX D: Request FOR RELIEF

Case 9:17-cv-00069-DLC-JCL Document 1 Filed 05/18/17 Page 13 of 13

and all the retirement benefits I would have been eligible for & recieved had I remained employed until ~~the~~ full-time with Rosauers until the age of retirement, ③ medical damages caused by an exacerbation of my medical dissability condition bipolar I disorder directly attributed to the stress & delitrious effect of that stress resulting from being unwillingly subjected to a sustained and deliberate pattern of illegal harassment and discrimination & hostile work environment, ④ pain, suffering & damage to my personal reputation as a result of this process. The sum total of these requests being 1.2 million dollars (\$1,200,000.00)

Runkle